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As part of our commitment to practitioners, KCC provides this resource on decisions related to class action litigation in state and federal court.

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CLASS CERTIFICATION

Defendant Class

Madera v. Barton, No. 18-cv-152, 2020 WL 7350207 (N.D. Fla. Dec. 14, 2020) (Walker, J.)

Plaintiffs brought suit against county supervisor of elections in Florida, alleging deficiencies in procedures and materials for persons protected under the Voting Rights Act. After denial of certification without prejudice for a defendant class of 32 county supervisors, and the dismissal of the Secretary of State from the case, Plaintiffs brought a renewed motion for certification of a defendant class.

The Court denied the motion. Reasoning in support of its decision, the Court analyzed the motion under Rule 23. For numerosity, the Court found 32 defendants in the “grey area” between sufficient and insufficient for numerosity per Eleventh Circuit precedent. For commonality, the Court noted differences in factual circumstances between counties that posed a significant barrier for a class-wide proceeding generating common answers, with no apparent easy solution.

In terms of typicality and adequacy, the Court found the analysis clearer, in that the proposed representative defendant was likely to concede more than many of the other defendants in the case. The Court also found each supervisor was likely to have its own specific arguments and factual bases to present. As such the Court found Defendant Barton would not fairly and adequately represent the class, and that the proposed class would not be appropriate.

CONSUMER

Deceptive Practices

In re: Fyre Festival Litigation, No. 17-cv-3296, 2020 WL 7043497 (S.D.N.Y. Dec. 1, 2020) (Castel, J.)

Plaintiff brought suit against a media company and its executives, alleging that misrepresentations were made in promoting an event on a remote island as luxurious under the knowledge that it would likely fail and endanger anyone who came. Plaintiff moved for default judgment against the company president, and for certification of a world-wide class.

The Court denied both motions, reasoning in support of its decision first that while the company president had a role in the event, default judgment could not be entered due to a lack of evidence establishing parts of the claims sought. Nonetheless, the Court determined that it would schedule a hearing to determine damages and establish any of the lacking allegations by further evidence.

Turning to class certification, the Court found numerosity met by virtue of over 5,000 members scattered around the world. For commonality, the Court found seven common questions capable of class-wide resolution of all or a significant number of class members. Typicality failed however due to a need to demonstrate individualized issues concerning reliance. For adequacy, the Court also found that although Plaintiff was otherwise acceptable, it could not conclude that he would be able to adequately participate in the litigation from his residence in the Netherlands.

In terms of Rule 23(b)(3) predominance, the Court also found that common questions were not likely to predominate due to a need to identify many statements made over a long period time, and class members' individual reliance on these, as well as other similar statutory elements relying on the individual circumstances of class members. The Court also found the class action was not superior on similar bases.

Fair Credit Reporting Act

Miller v. RP On-Site, LLC, No. 19-cv-02114, 2020 WL 6940936 (N.D. Cal. Nov. 25, 2020) (Koh, J.) Plaintiff brought suit for violation of the Fair Credit Reporting Act (“FCRA”) case against consumer reporting company, alleging a lack of ensuring accuracy in reporting criminal conviction information to a potential apartment lessor. Plaintiff moved for certification under Rule 23 (a) and (b)(3).

The Court denied certification on grounds of a failure of numerosity and adequacy. In terms of numerosity, the Court rejected Plaintiff’s conclusory allegations as to class size as insufficient, noting that the only evidence offered was in the form of law review articles citing data not sufficiently related to the case. The Court also credited Defendant’s evidence presented against numerosity. In terms of adequacy, the Court found Plaintiff had repeatedly made false statements under penalty of perjury about key facts underlying his claims, concerning both his criminal history and the alleged injury suffered from the Defendant’s report. Accordingly, the Court found him inadequate as a class representative.

Fair Debt Collection Practices Act

Viernes v. DNF Associates, LLC, No. 19-cv-00316, 2020 WL 6938010 (D. Haw. Nov. 23, 2020) (Mansfield, Mag. J.)

Plaintiff brought suit for violation of the Fair Debt Collection Practices Act (“FDCPA”) against a debt collector, alleging that misrepresentations were made in trying to collect a debt without a proper license in Hawaii in violation of the FDCPA and various state laws. Plaintiff moved for class certification.

The magistrate judge recommended certification be granted, reasoning in support of its decision first that in terms of numerosity, while Defendant asserted that Plaintiff had not established (beyond a list of lawsuits) that there was a record of potential class members able to claim the same individual circumstances under the FDCPA, Plaintiff had nonetheless made a satisfactory showing by inference that the Defendant sought to collect debts from the individuals in the list, and that a particularized inquiry was not necessary at this stage.

In terms of commonality, the Court found that the allegation under the FDCPA of unlicensed attempts to collect involved more than one common issue, and that commonality had been met. Likewise, the Court found typicality was met by the allegation of the same conduct for all claimants. For adequacy, while Defendant contended that Plaintiff was inadequate by virtue of confusion concerning events of the litigation, the Court found these were nuances that could be handled by counsel’s assistance, and that Plaintiff had demonstrated sufficient understanding to be an adequate representative.

Turning to Rule 23(b)(3) predominance, the Court echoed its numerosity analysis with respect to individualized issues concerning the nature of each individual debt, and found that FDCPA cases typically proceed with this circumstance, and that the common questions in the case were likely to predominate. Likewise, the Court found superiority met by both the FDCPA’s provision encouraging class actions and the likelihood that individual claims would not be brought due to lack of awareness or insubstantial recovery amounts.

EMPLOYMENT

Employee Retirement Income Security Act

Carlson v. Northrop Grumman Severance Plan, No. 13-cv-02635, 2020 WL 6870785 (N.D. Ill. Nov. 23, 2020) (Wood, J.)

Plaintiffs brought suit for violation of the Employee Retirement Income Security Act (“ERISA”) against employer and employee retirement plan, alleging a failure to issue a company memo required by the plan for members to obtain severance benefits after layoffs. The Court certified a class under the first count but not under the second and third counts. Plaintiffs filed a renewed motion for certification of subclasses under counts two and three.

The Court granted the motion, first addressing count two (alleging interference with the right to benefits). There, while the Court declined originally to certify a class because the proposed definition was over-broad, the Court found the amended complaint was sufficient, and that the theory was not entirely new so as to deny certification. The Court found typicality and commonality met by members falling under a common departmental layoff strategy. The Court also found numerosity was met by a subclass of 591. Noting that adequacy was uncontested, the Court turned to Rule 23(b) and found the commonality grounds above to be sufficient for certification under Rule 23(b)(2).

In terms of count three (seeking equitable reformation of plan terms), the Court first found commonality and typicality met, rejecting Defendant’s arguments against typicality as placing too much emphasis on Plaintiffs’ conduct when the claim concerns the misconduct of Defendants. For numerosity, the Court found 510 members sufficient. For adequacy, the Court found no contest from Defendants and that Plaintiffs’ adequacy was sufficient due to typicality being met. The Court then found certification appropriate under Rule 23(b)(2) due to seeking injunctive relief applicable to the whole class.

Fair Labor Standards Act

Hunt v. Aldi, Inc., No. 18-cv-2485, 2020 WL 7332715 (D. Md. Dec. 11, 2020) (Day, Mag. J.)

Plaintiffs brought suit for violation of the Fair Labor Standards Act (“FLSA”) against an employer, alleging claims for overtime compensation and other damages. The parties settled and jointly moved for approval; the Court sought a report and recommendation from a magistrate judge.

The magistrate judge recommended the joint motion be granted. Reasoning in support of its decision, the judge analyzed the settlement terms for reasonableness, finding first that the parties’ dispute was *bona fide* in that the defendant made no admission of liability and denied the allegations asserted by Plaintiffs.

Next, the judge reviewed the agreement with reference to the district’s *Saman* factors for fairness and reasonableness. The judge found sufficient opportunity for obtaining evidence and evaluating potential success in the litigation, and that the parties had reached agreement after sufficient negotiation without evidence of fraud or collusion, with the representation of experienced counsel who believed the agreement in the best interest of their clients. The judge also agreed that the award was reasonable in light of Plaintiffs’ circumstances in the litigation and difficulties ahead.

Looking next at attorneys’ fees, the Court looked at factors used by the Fourth Circuit for deciding such issues, and while it found certain deficiencies in the billing statements supplied, determined these were rendered immaterial after the parties had negotiated and agreed to a large reduction in the fees originally contemplated, and that the hours and rates billed were within the range of customary rates in similar cases for experienced

counsel. The judge also found the difficulty of questions in the case would have raised significant risks of recovery, and that settlement was ideal for both parties. As such, the judge recommended the Court grant the motion.

PRISONERS

McFields v. Dart, No. 20-1391, 2020 WL 7223689 (7th Cir. Dec. 8, 2020) (Kanne, J.)

Plaintiff detainee brought class action against county and sheriff concerning lapses in providing adequate dental care. After class certification was denied by the United States District Court for the Northern District of Illinois, Plaintiff appealed.

The Court affirmed, reasoning in support of its decision first that in terms of commonality, contrary to Plaintiff's assertion that the district court should not have delved into the merits of his claim, the Court found this was appropriate. Similarly, the Court found that the district court's analysis was not an abuse of discretion, because neither claim satisfied commonality due to the need for an individualized assessment of each plaintiff's case. For typicality, the Court found the same reasoning relevant, such that factual distinctions between the plaintiffs defeat any typicality between Plaintiff's claims and the class claims. Finally, for predominance, the Court agreed with the lower court that individual issues clearly predominate.

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